

# FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
601 New Jersey Avenue, N.W., Suite 9500  
Washington, D.C. 20001

May 21, 2007

SECRETARY OF LABOR,	:	TEMPORARY REINSTATEMENT
MINE SAFETY AND HEALTH	:	PROCEEDING
ADMINISTRATION (MSHA),	:	
On behalf of Frederick Martin,	:	
Applicant	:	Docket No. VA 2007-40-D
	:	NORT CD 2007-01
v.	:	
	:	
DICKENSON-RUSSELL COAL CO.,	:	Mine ID 44-07146
Respondent	:	Roaring Fork No. 4

## STAY ORDER

This case is before me based on an application for temporary reinstatement brought by the Secretary of Labor (the Secretary) on behalf of Frederick Martin against Dickenson-Russell Coal Company (Dickenson) under section 105(c)(2) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815(c)(2) (the Act). This case was scheduled for hearing on May 23, 2007. During a May 18, 2007, telephone conference, the parties agreed to stay this matter for a period not to exceed 60 days from the date of this Order during which time Dickenson agreed to economically reinstate Martin. Specifically, the Secretary and Dickenson have agreed that, in lieu of Dickenson reinstating Martin to a job at the Roaring Fork No. 4 Mine, Dickenson shall pay Martin, on a bi-weekly basis consistent with Dickenson's regular payroll practices, a sum of money, net of taxes and other required withholdings, that is equal to the amount of wages that Martin would have earned, net of taxes and other required withholdings, if he had been reinstated to his former position, hereinafter referred to as "temporary economic reinstatement." Dickenson shall be entitled to a credit or refund for any wages earned by Martin from other employers during the period of temporary economic reinstatement.

The parties will initiate a telephone conference within this 60 day period to discuss the status of the Secretary's discrimination investigation. If the Secretary, during this 60 day period, elects to file a discrimination action on Martin's behalf, the parties will agree on a mutually satisfactory discovery schedule and hearing date for the underlying discrimination matter.

Therefore, by agreement of the parties, it is hereby **ORDERED** that:

1. Dickenson-Russell shall provide temporary economic reinstatement to Martin effective upon entry of this Order.

2. Temporary economic reinstatement shall continue for a period of 60 days from entry of this Order. During this 60-day period, the temporary reinstatement proceedings in this case shall be stayed. If during the 60-day period the Secretary files a complaint on the merits of Martin's allegations of discrimination, temporary economic reinstatement shall continue pending a final order by the Administrative Law Judge on the complaint. If during the 60-day period the Secretary determines not to file a complaint, the parties shall address whether temporary economic reinstatement shall terminate. If at the end of the 60-day period, the Secretary has not determined whether to file a complaint, the Secretary may seek a hearing on the application for temporary reinstatement.

3. The parties agree that any future proceedings on temporary reinstatement or on a discrimination complaint shall be conducted expeditiously.

4. This Order is entered without prejudice to Dickenson-Russell's right to contest the allegations made in the Secretary's application for temporary reinstatement and in any discrimination complaint. This Order is also entered without prejudice to the right of either party to move to enlarge, dissolve, or modify this Order, and I retain jurisdiction to hear and determine any such motions.

5. If Martin is employed in another comparable position in the mining industry, the temporary economic reinstatement shall terminate.

Accordingly, **IT IS FURTHER ORDERED** that the captioned temporary reinstatement matter **IS STAYED** for a period not to exceed 60 days from the date of this Order.

Jerold Feldman  
Administrative Law Judge  
(202) 434-9967

Distribution: (Facsimile and Certified Mail)

Nickole Winnett, Esq., Office of the Solicitor, U.S. Department of Labor, 1100 Wilson Blvd.,  
22<sup>nd</sup> Floor West, Arlington, VA 22209-2247

Wade W. Massie, Esq., Penn, Stuart & Eskridge, P.O. Box 2288, Abingdon, VA 24212

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